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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/266,543	03/11/1999	JOHN W. HOLADAY	05213-0075	5968

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EXAMINER

YAEN, CHRISTOPHER H

ART UNIT PAPER NUMBER

1642

DATE MAILED: 04/22/2002

*dd*

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/266,543

Applicant(s)

HOLADAY ET AL.

Examiner

Christopher H Yaen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5-13, 15, 17-23 and 25-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-13, 15, 17-23 and 25-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

1. The examiner of the application has changed. This case has now been transferred as of 2/24/2001. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Christopher Yaen, Group Art Unit 1642.
2. Amendments to the specification and claims have been entered. Claims 16 is canceled without prejudice, claims 5-6, 15, 25 are amended, claims 30-40 are drawn to non-elected invention and are withdrawn from consideration and claims 5-13, 15, 17-23, and 25-29 are pending.
3. The text of those sections of 35 USC not included in this office action can be found in a prior Office action.
4. The amendments to the claims are acknowledged, however, claim 15 is missing from the "*Pending Claims*" section (page 9 of Amendment and Response to Second Office Action).

### ***Claim Rejections Withdrawn***

5. The rejection of claims 5-13, 15-23, 25-29 under 35 USC§112, second paragraph, for the lack of antecedent basis, has been **withdrawn**, in view of the amended claim language submitted by applicant.
6. The rejection of claim 6, under 35 USC§112, second paragraph, for the being of improper dependent form, has been **withdrawn**, in view of the amendment of the claim language submitted by applicant.

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7. The rejection of claims 5 and 6 under USC§102(b), as being anticipated by Ungheri *et al.* (US Pat No. 5,288,704), has been **withdrawn**, in view of the amendments set forth by the applicant.

8. The rejection of claim 6 and 15-23 under Judicially created doctrine of obviousness-type double patenting, has been **withdrawn**, in view of the argument and amendments set forth by the applicant.

### ***Claim Rejections Maintained and New Rejections***

9. The rejection of claims 15-23 under 35 USC§112, first paragraph, as failing to convert to one of skill in the art that the applicant has the invention at the time the application was filed, is **maintained**. The arguments set forth by the applicant is considered but is not found persuasive for the reasons of record. Applicant contends that invention was in possession, by amending the claims to state a compound that "consists" of the claimed SEQ ID No. This is not persuasive, because the applicant has not shown through any adequate written description or disclosure in the specification that the claimed SEQ ID No. are indeed structurally related to a receptor binding domain of VEGF. There is an inadequate description that these sequences are indeed receptor binding domains of VEGF.

10. The rejection of claim 6 under 35 USC§102 (b) as being anticipated by Senoo *et al.* (EP281822), is **maintained**. The arguments set forth by the applicant are considered but are not found persuasive for the reasons of record. Applicant contends that SEQ ID No. 1 or 2 is based on a novel discovery that is based on an unidentified

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genus of peptide found from the heparin binding domain of FGF. This argument is not found to be persuasive because Senoo *et al.* disclose of a peptide that is identical to that disclosed in SEQ ID No. 1. Therefore it is anticipated. Inherently, the properties discovered by applicant in the instant application can be found in the peptide discovered by Senoo *et al.* (see sequence alignment)

11. Claims 5-13, 15, 17-23, and 25-29 are **newly** rejected under 35 USC§112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim subject matter which the applicant regards as the invention.

In regards to claims 5, 15, and 25, in the recitation of the phrase "*immunogenic fragments*", it is unclear whether immunogenic fragments of FGF or VEGF are to contain heparin binding domains or receptor binding domains, respectively. Clarification is required.

12. Claims 5, 7-10, and 25-29 are **newly** rejected under the Judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 6-8, 15-17, and 19-21 of US Patent No. 5,919,459 (Nacy *et al.*). Claims 5, 7-10, and 25-29 of the instant application are drawn to immunogenic compositions comprising peptide fragment of FGF (heparin binding domain) or FGF (heparin binding domain) and VEGF (receptor binding domain). Claims 1-3, 6-8, 15-17, and 19-21 of US Patent No. 5,919,459 are drawn to similar compositions, with the same limitations set forth in the instantly claimed invention. Claims 25-29 of the instantly claimed invention are drawn to a combination of FGF and VEGF peptides, which would have been an obvious

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combination to make because claims 1-3, 6-8, 15-17, and 19-21 of US Patent No. 5,919,459 have already set forth the basic elements of instantly claimed invention.

**Conclusion**

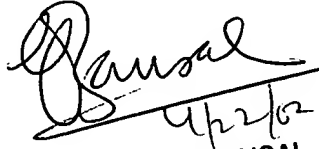
13. No claims are allowed. Because of the new rejections made in this response to reconsideration, this action is made non-final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher H Yaen whose telephone number is 703-305-3586. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Caputa can be reached on 703-308-3995. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Christopher Yaen  
Art unit 1642  
April 15, 2002

  
4/15/02  
GEETHA P. BANSAL  
PRIMARY EXAMINER